

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Tiana Frechette, et al.,	:	
	:	
<i>Individually, and on behalf</i>	:	Case No. 2:19-cv-4453
<i>of all others similarly</i>	:	
<i>situated,</i>	:	Chief Judge Algenon L. Marbley
	:	
Plaintiffs,	:	Magistrate Judge Kimberly A.
	:	Jolson
v.	:	
	:	
Health Recovery Services, Inc.,	:	PLAINTIFFS' MOTION TO
	:	DISMISS
Defendant.	:	

PLAINTIFFS' MOTION TO DISMISS

Now comes Plaintiffs, pursuant to Rule 41(a)(2), and move the Court for an order dismissing this matter without prejudice. "Whether dismissal should be granted under the authority of Rule 41(a)(2) is within the sound discretion of the district court." *Grover by Grover v. Eli Lilly and Co.*, 33 F.3d 716, 718 (6th Cir. 1994) (citing *Banque de Depots v. Nat'l Bank of Detroit*, 491 F.2d 753, 757 (6th Cir. 1974)). "[T]he purpose of Rule 41(a)(2) is to protect the nonmovant ... from unfair treatment." *Id.* To effectuate this purpose, district courts consider whether permitting voluntary dismissal will cause the nonmovant to suffer "plain legal prejudice;" the "mere prospect of a second lawsuit," however, does not constitute plain legal prejudice. *Id.*

This is a class action based on an alleged data breach involving private health care information. On August 29, 2023, this Court entered an order denying Plaintiffs' Motion for Class Certification. (Doc #80). As a result, Plaintiffs seek to voluntarily dismiss the case without prejudice.

Respectfully Submitted,

/s/ Michael L. Fradin

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2023, I served the foregoing *Motion to Dismiss* through the Court's ECF.

/s/ Michael L. Fradin